

UNICE VOTING PROPOSALS IN VIEW OF THE VOTE BY EP LEGAL AFFAIRS COMMITTEE

on

Proposal for a directive concerning unfair business-to-consumer commercial
practices in the internal market

(COM (2003) 356 FINAL)

Introduction

In view of the forthcoming vote by your Committee on the amendments to the above-mentioned proposal, UNICE would appreciate it if you could support the voting suggestions indicated below.

UNICE has followed this proposal with close attention during its preparation and has consistently advocated that, for the directive to be successful, it should result in simplification and further harmonisation of the regulatory environment on marketing practices, a common high level of consumer protection and efficient and even enforcement.

Harmonised and clearer rules on unfair commercial practices will result in enhanced legal certainty and will ease enforcement. This will contribute to the smooth functioning of the internal market (as provided for in art 95 used as legal basis of the proposal) and will boost both consumer and business confidence in cross-border trade.

UNICE considers it fundamental for attainment of those objectives that the directive:

1. seeks maximum harmonisation combined with a strong internal market clause, and focuses strictly on unfair behaviour between companies and consumers. These elements will help achieve a sufficiently high level of harmonisation and improve legal clarity.
2. is modified so that the room for disparate national interpretation is reduced: UNICE calls for a more rigorous general clause, better definitions, a black list that can only be modified via revision of the directive and guidance on interaction with existing rules.

UNICE hopes that you can take into account its proposals prepared for the vote by the Legal Affairs Committee. The first part of the attached document provides a table with a summary of our suggestions and the second is a short justification for each proposal.

For further clarification on the proposals attached, please contact UNICE (Carlos Almaraz, tel. 0032 (0) 2 237 65 57, email: c.alaraz@unice.be).

UNICE VOTING LIST IN VIEW OF THE VOTE BY EP JURI COMMITTEE

on

Proposal for a directive concerning unfair business-to-consumer commercial practices in the internal market

(COM (2003) 356 FINAL)

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SUMMARY

- Key:**
- + – Accept
 - – – Reject
 - O – No specific position

AMENDMENT	TABLED BY	UNICE PROPOSAL
Amendment 1	Ghildardt	–
Amendment 2	Ghildardt	–
Amendment 3	Ghildardt	–
Amendment 4	Ghildardt	–
Amendment 5	Ghildardt	–
Amendment 6	Ghildardt	O
Amendment 7	Ghildardt	+
Amendment 8	Ghildardt	–
Amendment 9	Ghildardt	–
Amendment 10	Ghildardt	–
Amendment 11	Ghildardt	–
Amendment 12	Ghildardt	–
Amendment 13	Ghildardt	–
Amendment 14	Ghildardt	–
Amendment 15	Ghildardt	–
Amendment 16	Ghildardt	–
Amendment 17	Lehne	–
Amendment 18	Wuermeling	–
Amendment 19	Twinn, Harbour, Lord Inglewood	+

Amendment 20	Wuermeling	-
Amendment 21	Lehne	-
Amendment 22	Gargani	+
Amendment 23	Thyssen	○
Amendment 24	Twinn, Harbour, Lord Inglewood	+
Amendment 25	Wuermeling	-
Amendment 26	Thyssen	+
Amendment 27	Lehne	-
Amendment 28	Lehne	-
Amendment 29	Wuermeling	-
Amendment 30	Thyssen	○
Amendment 31	Lehne	-
Amendment 32	Wuermeling	-
Amendment 33	Lehne	-
Amendment 34	Thyssen	○
Amendment 35	Beysen	+
Amendment 36	Twinn, Harbour, Lord Inglewood	+
Amendment 37	Wallis	-
Amendment 38	Lehne	-
Amendment 39	Thyssen	○
Amendment 40	Twinn, Harbour, Lord Inglewood	+
Amendment 41	Beysen	-
Amendment 42	Twinn, Harbour, Lord Inglewood	+
Amendment 43	Wuermeling	-
Amendment 44	Marcelino Oreja Arburúa	-
Amendment 45	Gargani	+
Amendment 46	Twinn, Harbour, Lord Inglewood	+
Amendment 47	Wuermeling	-
Amendment 48	Lehne	-
Amendment 49	Lehne	-
Amendment 50	Marcelino Oreja Arburúa	-
Amendment 51	Twinn, Harbour, Lord Inglewood	+
Amendment 52	Lehne	-
Amendment 53	Twinn, Harbour, Lord Inglewood	+
Amendment 54	Beysen	-
Amendment 55	Lehne	-
Amendment 56	Marcelino Oreja Arburúa	-
Amendment 57	Twinn, Harbour, Lord Inglewood	+
Amendment 58	Gargani	-
Amendment 59	Lehne	-
Amendment 60	Beysen	+
Amendment 61	Twinn, Harbour, Lord Inglewood	+

Amendment 62	Thyssen	+
Amendment 63	Fourtou	+
Amendment 64	Marcelino Oreja Arburúa	+
Amendment 65	Lehne	-
Amendment 66	Thyssen	+
Amendment 67	Lehne	-
Amendment 68	Lehne	-
Amendment 69	Marcelino Oreja Arburúa	-
Amendment 70	Beysen	○
Amendment 71	Twinn, Harbour, Lord Inglewood	-
Amendment 72	Fourtou	-
Amendment 73	Gargani	-
Amendment 74	Twinn, Harbour, Lord Inglewood	+
Amendment 75	Marianne L.P. Thyssen	+
Amendment 76	Twinn, Harbour, Lord Inglewood	+
Amendment 77	McCarthy	+
Amendment 78	Lehne	-
Amendment 79	Beysen	○
Amendment 80	Lehne	-
Amendment 81	Thyssen	-
Amendment 82	Gargani	-
Amendment 83	Twinn, Harbour, Lord Inglewood	+
Amendment 84	Fourtou	+
Amendment 85	Beysen	○
Amendment 86	Fourtou	○
Amendment 87	Lehne	-
Amendment 88	Beysen	-
Amendment 89	Gargani	-
Amendment 90	Twinn, Harbour, Lord Inglewood	+
Amendment 91	Twinn, Harbour, Lord Inglewood	○
Amendment 92	Wallis	-
Amendment 93	Wallis	-
Amendment 94	Twinn, Harbour, Lord Inglewood	+
Amendment 95	Wallis	-
Amendment 96	Lehne	-
Amendment 97	McCarthy	-
Amendment 98	Marianne L.P. Thyssen	-
Amendment 99	Beysen	+
Amendment 100	Lehne	-
Amendment 101	Marianne L.P. Thyssen	+
Amendment 102	Beysen	-
Amendment 103	Gargani	-

Amendment 104	Beysen	+
Amendment 105	Marcelino Oreja Arburúa	-
Amendment 106	Twinn, Harbour, Lord Inglewood	+
Amendment 107	Gargani	-
Amendment 108	Thyssen	O
Amendment 109	Gargani	+
Amendment 110	Twinn, Harbour, Lord Inglewood	-
Amendment 111	Thyssen	-
Amendment 112	Twinn, Harbour, Lord Inglewood	O
Amendment 113	Lehne	-
Amendment 114	Thyssen	O
Amendment 115	Marcelino Oreja Arburúa	-
Amendment 116	Twinn, Harbour, Lord Inglewood	-
Amendment 117	Gargani	+
Amendment 118	Lehne	+
Amendment 119	Twinn, Harbour, Lord Inglewood	+
Amendment 120	Gargani	-
Amendment 121	Lehne	-
Amendment 122	Twinn, Harbour, Lord Inglewood	+
Amendment 123	Gargani	+
Amendment 124	Beysen	-
Amendment 125	Gargani	-
Amendment 126	Twinn, Harbour, Lord Inglewood	+
Amendment 127	Lehne	-
Amendment 128	Marcelino Oreja Arburúa	-
Amendment 129	Thors	-
Amendment 130	Lehne	-
Amendment 131	Gargani	-
Amendment 132	Thyssen	+
Amendment 133	Twinn, Harbour, Lord Inglewood	O
Amendment 134	Lehne	+
Amendment 135	Lehne	-
Amendment 136	Twinn, Harbour, Lord Inglewood	+
Amendment 137	Lehne	-
Amendment 138	Beysen	+
Amendment 139	Twinn, Harbour, Lord Inglewood	+
Amendment 140	Thyssen	O
Amendment 141	Marcelino Oreja Arburúa	-
Amendment 142	Marcelino Oreja Arburúa	-
Amendment 143	Thyssen	+
Amendment 144	Thyssen	O
Amendment 145	Gargani	-

Amendment 146	Beysen	+
Amendment 147	Gargani	-
Amendment 148	Lehne	-
Amendment 149	Gargani	+
Amendment 150	Lehne	-
Amendment 151	Thyssen	O
Amendment 152	Marcelino Oreja Arburúa	-
Amendment 153	Lehne	-
Amendment 154	Gargani	-
Amendment 155	Twinn, Harbour, Lord Inglewood	+
Amendment 156	Twinn, Harbour, Lord Inglewood	+
Amendment 157	Twinn, Harbour, Lord Inglewood	+
Amendment 158	Thyssen	+
Amendment 159	Lehne	-
Amendment 160	Beysen	-
Amendment 161	Thyssen	-
Amendment 162	Twinn, Harbour, Lord Inglewood	+
Amendment 163	Twinn, Harbour, Lord Inglewood	+
Amendment 164	Twinn, Harbour, Lord Inglewood	-
Amendment 165	Lehne	+
Amendment 166	Beysen	+
Amendment 167	Fourtou	+
Amendment 168	Gargani	+
Amendment 169	Gargani	+
Amendment 170	Fourtou	-
Amendment 171	Twinn, Harbour, Lord Inglewood	-
Amendment 172	Thyssen	-
Amendment 173	Wallis	O
Amendment 174	Lehne	-
Amendment 175	Gargani	+
Amendment 176	Lehne	-
Amendment 177	Lehne	-
Amendment 178	Lehne	-
Amendment 179	Gargani	O
Amendment 180	Lehne	-
Amendment 181	Thyssen	+
Amendment 182	Thyssen	+
Amendment 183	Gargani	O
Amendment 184	Gargani	O
Amendment 185	Beysen	+
Amendment 186	Thyssen	+
Amendment 187	Twinn, Harbour, Lord Inglewood	O

Amendment 188	Beysen	+
Amendment 189	Gargani	O
Amendment 190	Beysen	+
Amendment 191	Gargani	+
Amendment 192	Twinn, Harbour, Lord Inglewood	-
Amendment 193	Thyssen	+
Amendment 194	Beysen	+
Amendment 195	Eija-Riitta Anneli Korhola	+
Amendment 196	Wallis	+
Amendment 197	Lehne	-
Amendment 198	Beysen	O
Amendment 199	Twinn, Harbour, Lord Inglewood	O
Amendment 200	Elena Ornella Paciotti	-
Amendment 201	Elena Ornella Paciotti	-
Amendment 202	Elena Ornella Paciotti	O
Amendment 203	Elena Ornella Paciotti	+

① PLEASE NOTE THAT ONLY THOSE AMENDMENTS THAT UNICE WOULD LIKE TO BE REJECTED OR ACCEPTS PARTIALLY ARE INCLUDED.

**VOTING PROPOSALS CONCERNING AMENDMENTS 1-203 TABLED BY MEMBERS OF EP
LEGAL AFFAIRS COMMITTEE**

Amendment 1: Reject.

UNICE does not see legal grounds for using art 153. Art 95 is the correct legal basis for measures intended to improve the internal market and art 95.3 provides that those measures must ensure a high level of consumer protection. Art 95 deals with EU action to help establishment of the internal market to the benefit of both consumers and business.

Amendments 2, 9, 10, 37, 200: Reject.

We oppose special provisions in the directive for particular groups of consumers, especially in the body of the directive other than the recitals. In the Commission's text, it is clear that, when the average consumer test is assessed, where a specific group of consumers is involved, be it children, elderly, disabled people or holiday consumers, the average member of that group should be the object of the test and therefore special characteristics and circumstances will be taken into account. This ensures at the same time a certain objectivity and measurability in the test and provides the means to protect those vulnerable groups adequately.

Amendment 3: Reject.

It is not appropriate or justified to impose participation of consumer organisations in the drafting of codes. This should be left to the autonomy of the parties to enter into dialogue.

Amendments 4, 11, 12,13, 14: Reject.

It is not appropriate for a framework directive to deal with compensation or arbitration arrangements. This should be dealt with at national level under the competence of the member states.

Amendment 5: Reject.

We prefer amendment 60 by Ward Beysen.

Amendment 8: Reject.

See justification to amendment 4. The Commission's text adds legal certainty.

Amendment 15: Reject.

We prefer amendment 121 by Marianne Thyssen.

Amendment 16: Reject.

We disagree with the idea of periodic production of a revised list for Annex I. This should be carried out where appropriate and when objective and material justification so requires.

Amendments 17, 18, 21, 25, 27, 43, 47, 52, 78, 80, 113, 127, 137, 150, 174, 176, 177, 178: Reject.

The majority of UNICE members support limitation of the scope of the directive only to business-to-consumer practices. Review and if appropriate amendment of the existing regulations on business-to-business practices would necessitate a separate and new formulation of the proposal.

Amendments 20, 29, 32: Reject.

It nullifies the internal market and harmonisation objectives of the directive and would create two legal systems, one for domestic practices and another for cross-border practices which would further fragment the internal market. This could have disastrous consequences for companies and consumers.

Amendments 28, 31, 33, 68, 93, 95, 96, 97, 100: Reject.

UNICE supports the maximum harmonization aim and therefore, it is in favour of the idea that the same general clause and basic principles and standards for unfair practices and as regards the fields covered in the directive are applied evenly throughout the EU. It is also aware of the challenges of the implementation of the directive and the importance of the judiciary to secure legal certainty and coherence which requires the maximum precision possible in the text of the directive leaving minimum scope for divergent national interpretation.

UNICE is worried about the implications of amendments undermining those cornerstone objectives. It would result in a directive “à la carte” and this would run counter to the aim of the directive which is to break down via regulatory harmonisation the barriers caused by divergent national rules governing commercial practices and that act as a deterrent for consumers and companies to engage in cross-border commercial activities. With this aim in mind, in UNICE’s views a maximum harmonisation approach combined with the mutual recognition principle as the best guarantee to achieve those objectives. However, UNICE does not support this approach at all costs and prefers a case-by-case assessment.

In the case of the directive, UNICE considers that increased convergence of laws is a fundamental part of the directive to ensure legal clarity and predictability of the regulatory environment and to ensure a common high level of consumer protection across Europe.

Amendment 38: Reject.

We agree on the clear differentiation between legislation and codes of conduct, they should not be mixed up or confused. However, we support some recognition of the value and role that codes of conduct can play in promoting good business practices.

Amendments 41, 160, 201: Reject.

It is not appropriate to deal with and even less to encourage official recognition or approval of codes of conduct in a framework directive on unfair commercial practices. This issue should be examined separately and following proper discussion with all stakeholders concerned and if appropriate, to prepare a specific proposal.

Amendment 44: Reject.

We agree with the justification but have doubts about the wording proposed in the amendment. The proposed amendment is not clear and the matter should be left to the discretion of the member states in accordance with the applicable competition rules.

Amendments 48, 49, 50: Reject.

We prefer the Commission’s text which provides for separate definitions for consumer and average consumer.

Amendment 54: Reject.

We prefer the Commission’s text.

Amendments 55, 56, 58: Reject.

We support amendment 57 by Ian Twinn, Malcolm Harbour and Lord Inglewood.

Amendment 59,65,67,159: Reject.

We support some recognition of the role of codes of conduct in commercial transactions with consumers and therefore a definition seems appropriate. We prefer the definition proposed in amendment 60 by Ward Beysen.

Amendment 69: Reject.

Since the professional diligence test is an integral part of the general clause, it seems appropriate that a definition is provided in the directive to ensure a common basic understanding.

Amendments 71, 72, 73: Reject.

We support amendment 75 by Marianne Thyssen.

Amendments 81, 82: Reject.

We support amendment 203 by Elena Ornella Paciotti.

Amendments 87, 88, 89: Reject.

We prefer the Commission's text.

Amendment 92: Reject.

We prefer the Commission's text. The proposed amendment seems to be in contradiction with and invalidate the internal market clause and the respect of the country of origin principle (applicable rules are those of the country of establishment of the trader) enunciated in article 5 of the directive.

Amendment 98: Reject.

We prefer the Commission's text.

Amendments 102, 103, 105, 107: Reject.

We support amendment 106 by Ian Twinn, Malcolm Harbour and Lord Inglewood.

Amendments 110, 111: Reject.

We support amendment 109 by Giuseppe Gargani.

Amendments 115, 116, 120, 128, 129: Reject.

We prefer the Commission's text.

Amendment 121: Reject.

We support amendment 122 by Ian Twinn, Malcolm Harbour and Lord Inglewood and 123 by Giuseppe Gargani.

Amendments 124, 125: Reject.

We support amendment 126 by Ian Twinn, Malcolm Harbour and Lord Inglewood.

Amendments 130, 131: Reject.

We support the following amendments on codes: 132 by Marianne Thyssen, 134 by Klaus-Heiner Lenhe, 136 by Ian Twinn, Malcolm Harbour and Lord Inglewood.

Amendments 135, 141, 142, 147, 152, 153, 154, 161, 172: Reject.

We prefer the Commission's text.

Amendment 145: Reject.

We would support the first part of the amendment but the last part would seriously undermine the legal certainty of the directive as regards what information is considered material and therefore traders would be supposed to disclose it to consumers.

Amendments 148, 197: Reject.

We believe that such a list with existing EU legal provisions setting out information requirements is helpful although it would need revision where appropriate.

Amendment 164: Reject.

We support the following amendments on article 11.1 (4): 165 by Klaus-Heiner Lehne, 166 by Ward Beysen, 167 by Janelly Fourtou, 168 and 175 by Giuseppe Gargani.

Amendments 170, 171: Reject.

We support amendment 169 by Giuseppe Gargani.

Amendment 180: Reject.

UNICE supports the list of unfair practices contained in Annex I provided the following conditions are met

- The list is exhaustive and Member States are not able to add other examples at national level. Review and modification of the list should **only** be possible by amendment of the directive. The directive should expressly provide that Member States, when enacting their national transposition laws, cannot add to their lists practices over and above the ones covered in the directive

- Practices in the list are set at a reasonable level and do not cast any doubt on their unlawfulness irrespective of the Member State. They must, in all circumstances, result in material distortion of the average consumer's economic behaviour and be contrary to professional diligence.

- They are drafted in a clear and unambiguous fashion.

If the conditions above-mentioned are not respected, UNICE would prefer that the list only contains practices that "are generally considered unfair" and serve as an interpretative tool for judges/enforcers to help implementation of the directive. Practices contained therein would be under the presumption of unfairness and judges/enforcers would have to assess the specific circumstances of the case in order to confirm or dismiss that presumption.

Amendment 192: Reject.

We support amendments 190 by Ward Beysen and 191 by Giuseppe Gargani. As second-best option, we would support amendment 193 by Marianne Thyssen.